

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 289 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

STATE OF GUJARAT

Versus

ALAMBHAI MAGABHAI PARMAR

Appearance:

MR KC SHAH, APP for Appellant

MR BP DALAL for Respondents No. 1-2

UNSERVED-EXPIRED (N) for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL

Date of decision: 26/11/2004

ORAL JUDGEMENT

Instant appeal filed under Section 378 of the
Code of Criminal Procedure, 1973 is directed against

judgment dated December 21, 1995, rendered by the learned Judicial Magistrate First Class, Umreth in Criminal Case No.94 of 1993, by which the respondents are acquitted of the offences punishable under Sections 447, 435 read with Section 114 of I.P.C.

2. Complainant Kanubhai Dhulabhai Patel is resident of village Umreth, District Kheda. He owns agricultural land roughly admeasuring 35 to 36 gunthas. The said land is situated on way to village Vinzol. The respondents belong to village Vinzol. It is the case of the prosecution that on January 7, 1993, the respondents had illegally cut trees as a result of which, they were rebuked by farmers of village Vinzol and, therefore, on January 8, 1993, at about 7.00 p.m., the respondents set on fire sheafs kept in the agricultural field of the complainant and caused damage to the extent of Rs.10,000/-. The complainant lodged complaint at 10.15 hours with Umreth Police Station which was registered by Natwarsinh Magansinh Bihola who was then Police Officer in charge of the police station. The complaint lodged by the complainant was handed over for investigation to Head Constable Danialbhai. On conclusion of investigation, the respondents were chargesheeted in the court of learned Judicial Magistrate First Class, Umreth for alleged commission of offences punishable under Sections 447, 435 read with Section 114 I.P.C. The charge at Exh.5 was framed against the respondents which was read over and explained to them but they did not plead guilty and claimed to be tried. The prosecution, therefore, examined (1) Kanubhai Dhulabhai Patel as p.w.1 at Exh.15, (2) Rajubhai Kanubhai as p.w.2 at Exh.18, (3) Rakesh Shivprasad Joshi as p.w.3 at Exh.22, (4) Kamlesh Parsottam as p.w.4 at Exh.23, (5) Natwarsinh Magansinh as p.w.5 at Exh.40 and (6) Danialbhai Manialbhai as p.w.6 at Exh.44 to prove its case against the respondents. The prosecution also produced documentary evidence such as complaint lodged by Kanubhai at Exh.16, abstract of 7/12 relating to survey no.588 owned by Kanubhai at Exh.17, fire-fighter report of Nagarpalika at Exh.30, panchnama of place of incident at Exh.24 etc. in support of its case against the respondents.

3. After recording of evidence of prosecution witnesses was over, the learned Magistrate explained to the respondents the circumstances appearing against them in the evidence of prosecution witnesses and recorded their further statements, as required by Section 313 of the Code of Criminal Procedure. In their further statements, the case of the respondents was that they were innocent. However, no witness was examined by any

of the respondents in support of their defence that they were innocent. On appreciation of evidence, the learned Judge has held that the prosecution has failed to prove charges levelled against the respondents and acquitted them by judgment dated December 21, 1995 giving rise to instant appeal.

4. It may be stated that respondent no.3 expired during the pendency of appeal and, therefore, appeal filed by him has been treated as having finally abated by order dated September 1, 1997. This court has heard Mr. K.C. Shah, learned APP and Mr. B.P. Dalal, learned counsel of the respondents at great length and in detail. This court has also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case.

5. After analysing, sifting and assessing the evidence on record with particular reference to its trustworthiness and truthfulness by a process of dispassionate judicial scrutiny, this court finds that the evidence of the complainant is rightly disbelieved by the learned Magistrate who has noticed several inconsistencies in his testimony recorded before the court and in his complaint. It is relevant to notice that the incident had taken place on January 8, 1993 at about 7.00 p.m. whereas the complaint is filed at about 10.15 hours. Obviously, there is a delay in lodging the complaint but no attempt was made by the complainant to explain the same at all. The case of the complainant was that the respondents had entered his field through the gate of the field and thereafter gone behind stacks of grass and set the sheafs on fire by lighting a matchstick. However, the complainant was not able to state before the court as to who had lighted the matchstick. Further, his case is that at the time of incident, he was taking rest near the cart alongwith his nephew Rajubhai Kanubhai whereas Rajubhai Kanubhai, in his testimony before the court, has stated that both of them were taking rest near a small room constructed in the field itself. Thus, the complaint stands contradicted by the testimony of his own nephew. It is important to note that as per the case of the complainant, he had seen the respondents entering his field and setting the sheafs on fire but no attempt was made by him either to raise shouts or to apprehend any of the respondents. His case that he had raised shouts after the respondents had left the field is quite strange. His claim that on hearing his shouts, Kantibhai Poultrywala, who is owner of the nearby field, had come

raises a serious doubt because no police statement of Kantibhai was recorded by the police during the course of the investigation of the complainant nor Kantibhai Poultrywala is examined as one of the witnesses in the case. In this case, the prosecution has examined Rakeshbhai Shivprasad Joshi who is fireman and who had extinguished the fire which was raging in the field of the complainant. His testimony makes it more than clear that though the sheafs were set on fire at about 7.00 p.m., the Fire Brigade was informed about the same only at about 8.15 hours. This delay is also not explained by any of the prosecution witnesses. The fireman has claimed in his cross-examination that as the fire was extinguished, most of the sheafs were saved but in the panchnama of the place of incident, no such mention is made at all. The record also shows that just adjoining the field of complainant Kantibhai, there is field of one Manibhai Babarbai Patel wherein also sheafs were set on fire and the fire was extinguished by personnel of Fire Brigade. Under the circumstances, it becomes doubtful whether the sheafs which were kept in the field of the complainant were, in fact, set on fire because the panchnama of scene of offence prepared with reference to burnt sheafs in the field of Manibhai indicates that there were other sheafs which were not damaged as fire was extinguished. Having regard to the inconsistencies noticed in the prosecution case, the acquittal of the respondents cannot be termed as perverse or arbitrary or contrary to the evidence on record.

6. This is an acquittal appeal in which court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal more particularly, when the evidence has not inspired confidence of the learned Magistrate who had opportunity to observe demeanour of the witnesses. As this court is in general agreement with the view expressed by the learned Magistrate, this court does not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons of acquittal given by the learned Magistrate and in the opinion of this court, expression of general agreement with the view taken by the Magistrate would be sufficient in the facts of the case. This is so, in view of the decisions rendered by the Supreme Court in the case of (1) GIRIJA NANDINI AND OTHERS vs. BIJENDRA NARAIN CHAUDHARY reported in AIR 1967 SUPREME COURT 1124 and (2) STATE OF KARNATAKA vs. HEMA REDDY AND ANOTHER reported in AIR 1981 SUPREME COURT 1417. On oral appreciation of

evidence, this court is satisfied that there is no infirmity in the reasons assigned by the learned Magistrate for acquitting the respondents. Suffice it to say that the learned Magistrate has given cogent and convincing reasons for acquitting the respondents. The learned APP has failed to convince this court to take a view contrary to the one already taken by the learned Magistrate and, therefore, the appeal is liable to be dismissed.

7. For the foregoing reasons, the appeal fails and is dismissed. Bail bonds executed by the respondents shall stand cancelled.

(J.M. Panchal, J.)

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